

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Progeny LMS, LLC)	
)	
Amendment of Part 90 of the Commission's)	RM No.10403
Rules Governing the Location and Monitoring)	
Service to Provide Greater Flexibility)	

**REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)^{1/} hereby submits its reply comments in response to the Commission’s Public Notice released in the above-captioned proceeding on April 10, 2002.^{2/} The Notice seeks comments on the Petition for Rulemaking filed by Progeny LMS, LLC (“Progeny”) on March 5, 2002, seeking additional flexibility for Location and Monitoring Service (“LMS”) licensees through the elimination or modification of certain restrictions currently included in the Commission’s LMS rules, 47 C.F.R. § 90.351-90.365.

CTIA joins the other commenters who oppose the Progeny Petition. Based on its own recitations, Progeny's petition suggests that LMS may not be a viable service. If this

^{1/} CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS and ESMR, as well as providers and manufacturers of wireless data services and products.

^{2/} Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Location and Monitoring Service Rules, RM No. 10403, DA 02-817 (April 10, 2002) (“Notice”).

is the case, the existing allocation for LMS should be revisited, and the Commission should consider whether reallocation of the LMS spectrum is preferable to grant of the requested flexibility.³ Progeny's request also raises significant interference concerns, as many Part 15 and amateur radio users have suggested in their comments. Based on this record, it is not appropriate to initiate a proceeding to consider giving Progeny the flexibility it seeks.

1. The Progeny LMS May Not Be a Viable Business

Progeny itself suggests that LMS may not be a viable business. Totally independent of the LMS business and the FCC rules that are the subject of the instant Petition, capital markets have dried up for start-up telecommunications firms.⁴ While Progeny seeks to blame the Commission's LMS rules for its inability to obtain suitable equipment, it also admits that the current economic climate, and in particular, the current status of the telecommunications equipment manufacturing sector, makes it "unlikely that any manufacturer will risk investing its limited research and development resources in equipment for LMS."⁵

As Progeny observes, LMS had its genesis as a service intended to track stolen automobiles, and the Commission's service rules were developed with the assumption that LMS licensees would provide a service limited to the ability to track and monitor goods and/or people.⁶ However, it is clear that the market for these location and monitoring services is much broader than merely LMS service in the 902-928 band. In

³ Should the Commission reallocate this spectrum, it should re-auction the spectrum subject to appropriate service rules.

⁴ See generally, Progeny Petition at 20.

⁵ *Id.*, at 16.

addition to the 130 million customers of CMRS licensees required by Section 20.18 of the Commission's rules to provide enhanced 911 services,⁷ the market for specialized location and monitoring services encompasses satellite systems, such as Qualcomm's OmniTracs service and ORBCOMM's "Little LEO" satellite service, as well as automotive telematics and LMS provided by ATX and GM's On-Star.

Even brief examination of these commercially available services suggests it is Progeny's business model, and not the Commission's rules, that lies at the root of Progeny's failure to attract financing and interest manufacturers. OmniTracs, for example, uses leased Ku-band satellite transponders to provide real-time messaging and position reporting to over 1300 customers, including twenty of the top twenty-five tank truck carriers and thirty-eight of the top forty truckload carriers in the United States. Qualcomm reports that its Network Management Center processes more than seven million transactions each day.⁸ OnStar reports two million subscribers in the United States, and ATX, On-Star's main rival, has approximately 350,000 subscribers: these competitors provide automotive telematics and vehicle location and monitoring services to millions of users across North America. In short, the market demand for LMS is being addressed and met by service providers other than Progeny.

⁶ *Id.*, at 17.

⁷ According to Progeny, "in the marketplace for location capabilities, CMRS providers will enjoy a "head start" over LMS providers because of the availability of equipment as well as cost advantages." *Id.*, at 18.

⁸ Qualcomm March 4, 2002, Press Release. Available at <<www.qualcomm.com/press/pr/releases2002/press992.html>>.

CTIA agrees with Progeny that the public interest suffers when valuable spectrum such as the LMS bands lie dormant.⁹ While Progeny asks the Commission to consider altering its regulatory approach to this band, CTIA suggests that the Commission should revisit the existing allocation for LMS, and consider whether reallocation of the LMS spectrum is preferable to grant of the requested flexibility.¹⁰

2. The Progeny Petition Raises Significant Interference Concerns

Progeny's request also raises significant interference concerns, as many Part 15 and amateur radio users suggested in their comments. Part 15 manufacturers, service providers, and the entire industry have designed equipment and deployed service in reliance upon the Commission's rules.¹¹ As many of the Comments observed, the principal purpose of the rules that prohibit LMS stations from interconnecting with the PSTN in real time and require that LMS stations be used for LMS purposes is to reduce the potential for LMS stations to interfere with other operations, including Part 15 operations.¹²

Axonn notes that allowing Progeny to operate at higher power, with more bandwidth and without the protections of the "safe harbor" provision, "would be disastrous not only to the equipment manufacturers of Part 15 devices, but also to the

⁹ Progeny Petition at 22.

¹⁰ In its comments, Axonn suggests if the Commission adopts the Progeny proposal, the Commission should re-auction the LMS band as a new service so that all persons be given the opportunity to bid upon the licenses. Axonn Comments at 6.

¹¹ See Axonn Comments at 4; License-Exempt Alliance Comments at 3. See also Itron, Inc. Comments at 2 (stating that tens of millions of Part 15 devices have already been deployed).

¹² See Itron Comments at 5-6.

average consumer that relies upon unlicensed devices in their everyday life.”¹³ As Ricochet Networks explains, Progeny’s proposal “would allow it to dominate the spectrum and create sufficient interference to significantly impair the services offered by unlicensed operators in the 902-928 MHz band.”¹⁴ Simply put, existing Part 15 systems were not designed to withstand a competing signal that would be permitted if the Progeny proposal was adopted.

CTIA agrees with Itron and other commenters that the Commission cannot “allocate spectrum to provide ‘flexibility of use’ if such flexibility would ‘result in harmful interference among users.’”¹⁵ Indeed, Congress has directed the Commission not to allocate spectrum to provide “flexibility of use” if such flexibility would “result in harmful interference among users.”¹⁶ Based on these interference concerns, it is not appropriate to initiate a proceeding to consider giving Progeny the flexibility it seeks.

The 902-928 MHz band “is one of the most prolific resources for the development of a panoply of [Part 15] wireless devices and systems that substantially improve this nations’ safety and economic well being.”¹⁷ “Progeny’s lack of financial success notwithstanding, there is simply no basis for threatening the viable use of this band under Part 15 in order to make LMS substantially more than the advanced location and monitoring service that the Commission envisioned in the LMS rulemaking.”¹⁸ Based on

¹³ Axonn Comments at 7.

¹⁴ Ricochet Networks Comments at 10.

¹⁵ Itron, Inc. Comments at 5; SchlumbergerSema Inc. Comments at 6 (both citing 47 U.S.C. § 303(y)).

¹⁶ 47 U.S.C. § 303(y).

¹⁷ SchlumbergerSema Inc. Comments at 6.

these interference concerns, it is not appropriate to initiate a proceeding to consider giving Progeny the flexibility it seeks.

CONCLUSION

Based on its own recitations, Progeny's petition suggests that LMS may not be a viable service. If this is the case, the existing allocation for LMS should be revisited, and the Commission should consider whether reallocation of the LMS spectrum is preferable to grant of the requested flexibility. Progeny's request also raises significant interference concerns, as many Part 15 and amateur radio users have suggested in their comments. Based on these interference concerns, it is not appropriate to initiate a proceeding to consider giving Progeny the flexibility it seeks.

Respectfully submitted,

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